

NH DEPARTMENT OF CORRECTIONS POLICY AND PROCEDURE DIRECTIVE	CHAPTER <u>Enforcement Operations</u> STATEMENT NUMBER <u>5.42</u>
SUBJECT: <b>VICTIM IMPACT AND RESTITUTION DETERMINATION</b>	EFFECTIVE DATE <u>10/01/03</u> REVIEW DATE <u>07/15/04</u> SUPERCEDES PPD# <u>5.42</u> DATED <u>08/15/01</u>
ISSUING OFFICER:  <u>Phil Stanley, Commissioner</u>	DIRECTOR'S INITIALS _____ APPENDIX ATTACHED: YES _____ NO _____
REFERENCE NO: See reference section on last page of PPD.	

I. PURPOSE:

To provide the method for learning the full impact of the crime on the victim including the direct and indirect physical, emotional and financial harms to determine restitution and make recommendations to the court.

II. APPLICABILITY:

All staff of the Division of Field Services only.

III. POLICY:

It is the policy of the Department of Corrections, Division of Field Services to provide the victim with an opportunity to address the court through the pre-sentence report. This information may include the nature and extent of direct and indirect harms caused by the crime, the overall impact of the crime and the victim's desired terms of sentencing including the terms of restitution.

IV. PROCEDURES:

- A. In the process of completing a pre-sentence report the assigned Probation/Parole Officer (PPO) or designee from Field Services shall contact the victim. For a property crime, a "Victim Input Request" and "Victim Data Form" mailed to the victim will suffice (Attachments 1 and 2). When the offense is a crime against a person, the Victim Witness Advocate should be contacted as a source for information.  
If the victim suffered or was directly threatened with physical injury they shall be personally contacted and interviewed. The interview may be by telephone. However if the victim requests a face to face interview one shall be arranged.
- B. In cases where physical injury was threatened or caused and the victim cannot be contacted by telephone, a letter will be sent to the victim requesting them to contact the PPO/designee.
- C. If the victim does not respond within 14 days to the first request for information, a second and final inquiry will be sent. Documentation of all inquiries shall be kept in the defendant's case file.
- D. The victim shall also be informed that it is their legal right to provide an impact statement,

- but they are under no obligation to furnish said statement. The victim shall be informed that the defendant and the defense counsel have the right to read the pre-sentence report including the summary of the victim's input.
- E. If the victim of the crime is a minor they shall not be contacted directly. The parent or legal guardian shall be contacted instead. Minor victims shall not be interviewed without the permission of the parent or legal guardian.  
Likewise, a victim's therapist, doctor or other such agent shall not be contacted without the permission of the victim or a parent or legal guardian if the victim is a minor.
  - F. When the victim is deceased the next of kin shall be contacted for an impact statement.
  - G. All communications and attempts at communication with the victim shall be summarized in the victim statement section of the pre-sentence report. Should the victim provide a timely written statement it shall be attached to the report.
  - H. Information to be ascertained from the victim includes:
    - 1. The direct and indirect physical, emotional and financial effects the crime had on the individual/family.
    - 2. The extent of direct loss (i.e. out-of-pocket losses or other expenses incurred as a direct result of the criminal offense).
    - 3. The amount of insurance reimbursement and deductible.
    - 4. The victim's sentence recommendation.
  - I. In the event a disagreement exists between the offender and the victim as to the actual loss incurred the court shall be so notified and requested to make a final determination as to the restitution amount. It will be necessary for the victim to furnish documentation of the financial loss.
  - J. Claims for restitution shall be reviewed to determine if the claim qualifies for restitution in a criminal proceeding (NH RSA 651:63, 64, 65, + 125 N.H. 128 (1984) State vs. Fleming Attachment 3). Losses must equate to economic losses in which a monetary value can be assigned and must be corroborated by supporting documentation.
  - K. As per RSA 651:62 "Economic loss" includes: (Attachment 3)
    - 1. Reasonable charges incurred for reasonably needed products, services and accommodations, including but not limited to medical and dental care charges, rehabilitation and other remedial treatment and care including mental health services for the victim, or in the case of the death of the victim, for the victim's spouse and immediate family
    - 2. Loss of income by the victim or the victim's dependents
    - 3. The value of damaged, destroyed or lost property
    - 4. Expenses reasonable incurred in obtaining ordinary and necessary services in lieu of those the injured or deceased victim would have performed, if the crime had not occurred, for the benefit of the victim or the victim's dependents.
    - 5. Reasonable expenses related to funeral and burial/crematory services for the decedent victim.
    - 6. Losses relating to the pain and suffering, loss of earning capacity and wrongful death claims are not readily ascertainable, are under the purview of civil actions and may not be appropriately considered for restitution. If these issues exist, note them in the evaluation and analysis section of the pre-sentence report
  - L. Insurance companies or any collateral source subrogated to the rights of a victim that identifies  
a victim for personal injury, death or economic loss are entitle to restitution provided that the victim's claim is satisfied before that of the subrogee.
  - M. Restitution can be requested from the court for the Victim's Assistance Commission and the N.H. Drug Task Force.
  - N. Refused or unclaimed restitution payments shall be made to the Victims' Assistance Fund (see RSA 651:63, III).

#### REFERENCES:

Standards for the Administration of Correctional Agencies  
Second Edition. Standards

Standards for Adult Correctional Institutions  
Fourth Edition. Standards

Standards for Adult Community Residential Services  
Fourth Edition. Standards

Standards for Adult Probation and Parole Field Services  
Third Edition. Standards

**3-3214**

Other

BLAISDELL/beo

Attachments

PLEASE RESPOND TO: Department of Corrections  
Division of Field Services

RE: State v. (defendant)

Dear \_\_\_\_\_ :

The New Hampshire Department of Corrections, Division of Field Services is completing a pre-sentence investigation on the above named defendant concerning the offense of (name offense) on or about (date). This matter is currently pending in the (name of court).

To assist the Court in this process, it is important for our department to obtain input from you concerning the offense, its financial and emotional impact on you, your opinion on sentencing and other information that is relevant to sentencing.

Your input can be provided by a written response either in a letter or the attached form, a phone call to my office or you can make arrangements for an appointment to meet with me. Matters pertaining to the financial losses that are to be considered for restitution must, however, be done in writing. In order to include your input into the report; please respond to the address listed above within two weeks from receipt of this letter.

Cooperation with this investigation does not waive any rights you may have to be heard by the Court at the sentencing hearing. Should you have any questions about this process, please contact me at 271-2268.

It is your responsibility to advise us of any change of address in order not to jeopardize any reimbursement that may be ordered.

Sincerely,

CC: File

Division of Field Services  
105 Pleasant Street  
PO Box 368  
Concord, NH 03302-0368

NEW HAMPSHIRE DEPARTMENT OF CORRECTIONS

VICTIM DATA FORM

RE: STATE VS. \_\_\_\_\_

1. Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_  
\_\_\_\_\_

Phone Number(s): \_\_\_\_\_

2. Medical treatment received: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Total Medical Bills: \_\_\_\_\_

Insurance Covered: \_\_\_\_\_

Total Paid by You: \_\_\_\_\_

3. Property Damage/Loss ( Please complete attached form)

4. Other information that you wish to provide. If more space is needed, please continue on the back of this form.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. If you do not wish to provide any information, please indicate that preference and return this form. (Please be advised that the Department of Corrections will not be able to collect any court ordered restitution unless you provide the amounts to us.)

**PLEASE NOTE:** SHOULD RESTITUTION BE ORDERED CHECKS WILL BE ISSUED TO YOU AS THE MONEY IS COLLECTED. IF YOU HAVE A CHANGE OF ADDRESS, PLEASE PROVIDE THAT CHANGE TO THE ABOVE ADDRESS SO THAT THE CHECKS CAN BE FORWARDED TO YOUR NEW ADDRESS.

VICTIM DATA FORM - PAGE TWO  
RE: STATE VS.

1. If you incurred property damage, please list all items stolen, damaged or destroyed.
2. If insurance reimbursement for losses has been received, please indicate where requested on this form.
3. If you are aware that stolen items are currently in custody of the investigating law enforcement agency and are expected to be returned to you in an acceptable form, check "recovered" box.
4. If items are currently missing, please check "missing" box.
5. Please attach copies of all documentation verifying value of items and/or cost to repair (i.e. appraisals, bills, estimates).

Items Stolen or Damaged	Value	Repair Cost	Recovered	Missing

Total losses/damages:                      \$

Insurance Reimbursement:                      \$

Insurance Deductible:                      \$ \_\_\_\_\_

Name of Insurance Company:

Address:

Phone number: \_\_\_\_\_

Claim #

I CERTIFY THAT THE ABOVE IS TRUE TO THE BEST OF MY KNOWLEDGE.

SIGNATURE: \_\_\_\_\_

DATE:

**Restitution****Section 651:62**

**651:62 Definitions.** – As used in this subdivision, unless the context otherwise indicates:

- I. "Claimant" means a victim, dependent, or any person legally authorized to act on behalf of the victim.
  - II. "Dependent" means any person who was wholly or partially dependent upon the victim for care and support when the crime was committed.
  - III. "Economic loss" means out-of-pocket losses or other expenses incurred as a direct result of a criminal offense, including:
    - (a) Reasonable charges incurred for reasonably needed products, services and accommodations, including but not limited to charges for medical and dental care, rehabilitation, and other remedial treatment and care including mental health services for the victim or, in the case of the death of the victim, for the victim's spouse and immediate family;
    - (b) Loss of income by the victim or the victim's dependents;
    - (c) The value of damaged, destroyed, or lost property;
    - (d) Expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the injured or deceased victim would have performed, if the crime had not occurred, for the benefit of the victim or the victim's dependents;
    - (e) Reasonable expenses related to funeral and burial or crematory services for the decedent victim.
  - IV. "Offender" means any person convicted of a criminal or delinquent act.
  - V. "Restitution" means money or service provided by the offender to compensate a victim for economic loss, or to compensate any collateral source subrogated to the rights of the victim, which indemnifies a victim for economic loss under this subdivision.
  - VI. "Victim" means a person or claimant who suffers economic loss as a result of an offender's criminal conduct or the good faith effort of any person attempting to prevent or preventing the criminal conduct.
- Source.** 1981, 329:2. 1994, 190:1, eff. Sept. 21, 1994. 1996, 286:7, eff. July 1, 1997.

**651:63 Restitution Authorized. –**

I. Any offender may be sentenced to make restitution in an amount determined by the court. In any case in which restitution is not ordered, the court shall state its reasons therefor on the record or in its sentencing order. Restitution may be ordered regardless of the offender's ability to pay and regardless of the availability of other compensation; however, restitution is not intended to compensate the victim more than once for the same injury. A restitution order is not a civil judgment.

II. Restitution ordered shall be in addition to any other penalty or fine and may be a condition of probation or parole. Restitution, if ordered, may also be a condition of any work release program administered under RSA 651:19 or RSA 651:25.

III. The making of a restitution order shall not affect the right of a victim to compensation under RSA 21-M:8-h, except to the extent that restitution is actually collected pursuant to the order. The offender shall reimburse the victims' assistance fund for any payments made by the fund to the victim pursuant to RSA 21-M:8-h after the restitution order is satisfied. Refused or unclaimed restitution payments shall be made to the victims' assistance fund.

IV. The court's determination of the amount of restitution shall not be admissible as evidence in a civil action. The court shall reduce any civil damage awards by restitution ordered and paid to the victim. Restitution orders shall survive bankruptcy.

V. The court shall add 17 percent to the total restitution payment as an administrative fee to be paid by the offender. Such administrative fee shall be divided into the following components, to be designated as follows: 15 percent shall be continually appropriated to a special fund for the division of field services, department of corrections, \$22,500 of which shall lapse to the general fund at the end of each quarter should that amount be received, to maximize restitution collections, directly or through agents of contractors selected by the department; and 2 percent for the victims' assistance fund. Administrative fees shall be paid by the offender in addition to and when each restitution payment is made.

VI. Restitution, administrative fines and fees, and other fees collected, except for supervision fees pursuant to RSA

504-A:13, shall be allocated on a pro-rata basis by the commissioner of corrections or his or her designee when payments are insufficient to cover the full amount due for each of these balances, except that restitution to victims shall have priority over all other allocations.

VII. On or before July 1, 1997, and each year thereafter until July 1, 2000, the division of field services, department of corrections, shall submit an annual budget plan to the joint legislative fiscal committee. The division of field services, department of corrections, shall have the authority to hire temporary personnel and to procure equipment and expend relevant operating expenses as may be necessary to implement this chapter.

**Source.** 1981, 329:2, eff. Aug. 16, 1981. 1996, 286:7, eff. July 1, 1997; 286:19, eff. July 1, 2001. 1999, 261:6, eff. July 1, 1999. 2001, 176:1, eff. July 5, 2001.